

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EDWARD JOHNSON,

Petitioner,

v.

Case No. 12-11038

LLOYD RAPELJE,

Respondent.

/

**OPINION AND ORDER DISMISSING WITHOUT PREJUDICE
PETITION FOR A WRIT OF HABEAS CORPUS AND
DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY**

On March 8, 2012, Michigan prisoner Edward D. Johnson (“Petitioner”) filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his state-court criminal sentences. Petitioner listed three sentencing claims in his petition, but did not provide the court with any details of those claims; instead, he referenced several appendices to his petition, including his state appellate brief, without filing those materials. Additionally, Petitioner did not pay the required filing fee when he filed his petition, nor did he submit an application to proceed *in forma pauperis*. As a result, on March 14, 2012, the court issued two deficiency orders. The first order required Petitioner to supplement his pleadings with the appendices referenced in the petition and/or to provide a more detailed statement of the factual and legal bases for his claims. The order provided that if he did not do so within 30 days, his petition could be dismissed. The second order required Petitioner to either pay the filing fee or submit a properly completed *in forma pauperis* application. The order provided that if he did not

do so within 21 days, his case would be dismissed. Petitioner has failed to correct either deficiency or otherwise to respond to the court's orders within the allotted time, and the court will therefore dismiss without prejudice his habeas petition.

Petitioner may not appeal this court's decision to dismiss the petition unless he is granted a certificate of appealability under 28 U.S.C. § 2253. Fed. R. App. P. 22(b)(1); see R. Gov. § 2254 Cases 11(a) ("The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a federal court denies a habeas claim on procedural grounds without addressing the merits of a petitioner's claim, a certificate of appealability should be granted if "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right" and "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In the court's view, reasonable jurists could not debate the correctness of this procedural ruling, so the court declines to issue Petitioner a certificate of appealability. Accordingly,

IT IS ORDERED that the petition for writ of habeas corpus [Dkt. # 1] is DISMISSED WITHOUT PREJUDICE. The court makes no determination as to the merits of Petitioner's claim.

IT IS FURTHER ORDERED that the court DECLINES to issue Petitioner a certificate of appealability.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: April 27, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 27, 2012, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522